

**Introduced by Senator Battin**

February 6, 2006

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An act to amend Section 311.3 of the Penal Code, relating to crimes.

## LEGISLATIVE COUNSEL'S DIGEST

SB 1238, as introduced, Battin. Child pornography.

Existing law provides that a person is guilty of the crime of sexual exploitation of a child if he or she knowingly develops, duplicates, prints, or exchanges any representation of information, data, or image that depicts a person under 18 years of age engaged in an act of sexual conduct, as specified.

This bill would make technical, nonsubstantive changes to these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 311.3 of the Penal Code is amended to  
2     read:  
3     311.3. (a) A person is guilty of sexual exploitation of a child  
4     if he or she knowingly develops, duplicates, prints, or exchanges  
5     any representation of information, data, or image, including, but  
6     not limited to, any film, filmstrip, photograph, negative, slide,  
7     photocopy, videotape, video laser disc, computer hardware,  
8     computer software, computer floppy disc, data storage media,  
9     CD-ROM, or computer-generated equipment, or any other  
10    computer-generated image that contains or incorporates in any

1 manner; any film or filmstrip, that depicts a person under the age  
2 of 18 years engaged in an act of sexual conduct.

3 (b) As used in this section, “sexual conduct” means any of the  
4 following:

5 (1) Sexual intercourse, including genital-genital, oral-genital,  
6 anal-genital, or oral-anal, whether between persons of the same  
7 or opposite sex or between humans and animals.

8 (2) Penetration of the vagina or rectum by any object.

9 (3) Masturbation for the purpose of sexual stimulation of the  
10 viewer.

11 (4) Sadomasochistic abuse for the purpose of sexual  
12 stimulation of the viewer.

13 (5) Exhibition of the genitals or the pubic or rectal area of any  
14 person for the purpose of sexual stimulation of the viewer.

15 (6) Defecation or urination for the purpose of sexual  
16 stimulation of the viewer.

17 (c) Subdivision (a) does not apply to the activities of law  
18 enforcement and prosecution agencies in the investigation and  
19 prosecution of criminal offenses or to legitimate medical,  
20 scientific, or educational activities, or to lawful conduct between  
21 spouses.

22 (d) Every person who violates subdivision (a) shall be  
23 punished by a fine of not more than two thousand dollars  
24 (\$2,000) or by imprisonment in a county jail for not more than  
25 one year, or by both that fine and imprisonment. If the person has  
26 been previously convicted of a violation of subdivision (a) or any  
27 section of this chapter, he or she shall be punished by  
28 imprisonment in the state prison.

29 (e) The provisions of this section do not apply to an employee  
30 of a commercial film developer who is acting within the scope of  
31 his or her employment and in accordance with the instructions of  
32 his or her employer, provided that the employee has no financial  
33 interest in the commercial developer by which he or she is  
34 employed.

35 (f) Subdivision (a) does not apply to matter that is unsolicited  
36 and is received without knowledge or consent through a facility,  
37 system, or network over which the person or entity has no  
38 control.

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